BACKGROUND PAPER FOR HEARING

BOARD OF PODIATRIC MEDICINE

IDENTIFIED ISSUES, QUESTIONS FOR THE BOARD, AND BACKGROUND CONCERNING ISSUES

PRIOR SUNSET REVIEW: The Board of Podiatric Medicine (BPM or Board) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) four years ago (1996-97). The JLSRC and the Department of Consumer Affairs (DCA) identified a number of issues concerning this Board. For example, the JLSRC found that: 1) the number of public members in the composition of the Board was not sufficient; 2) specialty licensure for purposes of performing ankle surgery was not necessary; 3) the Board should obtain additional input and justification before prohibiting the advertising of "free foot exams" by podiatrists; 4) information concerning licensed podiatrists should be included on the Medical Board's internet verification system; 5) residency programs should be required to have at least a fifty percent pass rate for residents taking the Board's oral clinical examination; and 6) an external audit from the University of California system should be provided to the Legislature to determine if it is providing appropriate funds for podiatric medical training.

The JLSRC recommended continuing the Board of Podiatric Medicine and directed the Board to implement a number of recommendations and changes. Many of these recommendations and issues were addressed by legislation. With the BPM's support, SB 1981 (Greene), Chapter 736, Statutes of 1998: 1) enacted the nation's first continuing competence program for any doctor licensing board; 2) eliminated a special ankle surgery certification and examination; 3) changed the board composition by adding an additional public member; 4) sunset BPM's diversion program; and 5) required an audit from the University of California system to determine if appropriate funds were being provided for podiatric medical training.

In September 2001, the Board of Podiatric Medicine submitted its required sunset report to the JLSRC. In this report, information of which is provided in Members' binders, the Board described actions it has taken since the Board's prior review. Issues that the Board addressed as a result of the JLSRC's recommendations and other changes made include the following: 1) information concerning licensed podiatrists is now included on the Medical Board's internet verification system; 2) a public hearing was held by the Board to discuss the advertising for "free foot exams" and justification for prohibiting such advertising was provided; 3) the need for the limited license required to participate in a postgraduate podiatric residency program was justified; and 4) BPM's regulations were amended to require residency programs to have at least a fifty percent pass rate for residents taking the Board's oral clinical examination. The board also amended its strategic plan to address, among other things, the financial challenges brought by the declining number of licensees associated with managed care.

The following are unresolved issues pertaining to this Board, or areas of concern for the JLSRC, along with background information concerning the particular issue. There are questions that staff has asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

It must be noted that the BPM has endorsed the Federation of Podiatric Medical Boards' Model Law (Model Law) and has proposed that several provisions of the Model Law be incorporated into California state law. A number of statutory modifications would be necessary to implement the national Model Law. Some of the issues that follow stem from these proposed changes that would have to be amended into Article 22 of the Medical Practices Act.

CURRENT SUNSET REVIEW ISSUES

LICENSURE ISSUES

ISSUE #1: The Board is proposing a two-year requirement for post-graduate medical training, an expansion of the current requirement of completion of one-year of residency training.

Question #1 for the Board: *What is the justification for the doubling of the time required in a residency program? Is there evidence that the one-year program is not adequate or that additional training would reduce the occurrences of medical incompetence, or that there is a correlation to podiatrists who end up being the subject of disciplinary action for incompetent practice or malpractice? To what extent now do podiatrists obtain more than the one-year requirement of training? What impact would this increase have on current and future podiatric residents and to the profession?*

Background: Other professions have also recommended increases in education requirements and the Committee has typically been concerned with such proposals. Increasing the postgraduate training requirement might act as a "barrier to entry" into the profession for new license applicants, possibly delaying their ability to begin their practice, and delaying them from beginning their earning a livelihood from which to pay off the high costs of their education. In past years, the Medical Board of California has also tried to increase its postgraduate training and has not been successful in doing so. The Board maintains that podiatric medicine has become increasingly complex and that one-year of postgraduate training is considered by educators as insufficient prior to entering the practice.

ISSUE #2: Existing law limits the terms that can be used in advertising to "podiatrist" and "foot specialist." The Board is proposing to revise the advertising provisions to authorize the use of "doctor of podiatric medicine" and "podiatric surgeon and physician."

Question #2 for the Board: *Why is this necessary? The Board should explain its reasoning and justification for use of these new terms relating to the practice of podiatric medicine. How much of the Board's enforcement activities involves enforcing existing law in this area?*

Background: Business & Professions Code Section 2474 prohibits any person without a valid license from using the terms "podiatrist" and "foot specialist". Currently, the use of "doctor of

podiatric medicine" and "podiatric surgeon and physician" is not authorized. The Board points to the fact that its licensees are "doctors of podiatric medicine" – that is the title of both the degree and the license. Further, "podiatric physician and surgeon" is the profession's common terminology nationally. There is an indication that the Board spends some of its enforcement activity enforcing this section of the law. Is it a misuse of the Board's time to go after a DPM (doctor of podiatric medicine) who refers to himself or herself by a title that reflects what they are?

ISSUE #3: The Board of Podiatric Medicine has expressed the desire to standardize licensure requirements across state lines. Currently, BPM does not have reciprocity with other states.

Question #3 for the Board: *How would adoption of the Model Law facilitate reciprocity?*

Background: The Board believes that the standardization of licensing requirements would enhance license reciprocity across state lines – which does not currently exist as all candidates are required to meet all of the California requirements for new licensure including residency training and passage of the state oral exam.

ISSUE #4: Through a review of the Board's licensing activities, it was found that BPM license applications are not abandoned within the regulated one-year period and that applicants are allowed to reactivate applications that have been pending over one year.

Question #4 for the Board: *What steps has the Board taken to address this problem?*

Background: California Code of Regulations 1399.660(c) states that an application shall be denied when an applicant does not complete the application in one year or if the applicant fails to appear for two consecutive oral and clinical examinations. In the event the applicant should subsequently decide to reactivate the application, or take the examination, a new supplemental application shall be filed and the full application fee paid to the Board. In a Department of Consumer Affairs audit, it was found that several applications had been pending from as early as 1992. Some of the applications remain open even though the Board received written notification from the applicant stating they no longer wish to apply for a California license. Also, applicants are allowed to reactivate old applications that have been pending over one year.

SCOPE OF PRACTICE ISSUES

ISSUE #5: Adoption of the Model Law would rewrite the definition of podiatry, largely expanding the scope of practice for podiatrists.

Question #5 for the Board: *What is the definition of "lower extremity"? Would these changes authorize the act of performing amputations and administration of anesthetics? Why such a broad expansion? The Board should discuss and justify.*

Background: The current definition of podiatric medicine is "the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons

that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot." (Business and Professions Code Section 2472(b))

The proposed language would define podiatric medicine as "the practice of medicine on the lower extremity, and includes the diagnosis and treatment of conditions affecting the functions of the foot, and local manifestation of systemic conditions as they appear of the lower extremity, and superficial conditions of the leg, by all appropriate systems and means, including the prescribing and administering of drugs and medicines." Additionally, the proposed changes include deletion of the prohibition of podiatrists performing amputations and administering an anesthetic other than local.

ISSUE #6: The national Model Law would allow a podiatrist to assist a licensed physician or surgeon in non-podiatric procedures.

Question #6 for the Board: *Is this change aimed at allowing DPMs to do what they are trained to do in podiatric medical school?*

Background: Section 2475 of the Business & Professions Code requires graduates of an approved college or school of podiatric medicine to obtain a "limited" license in order to participate in a postgraduate residency program. Prior to issuance of a limited license, the applicant for a limited license must have passed Parts I and II of the written "national boards" administered by the National Board of Podiatric Medical Examiners. The limited license to participate in the residency program may be renewed annually for up to four years. During that time, a resident is able to practice under the supervision of a licensed physician or surgeon in non-podiatric procedures. However, once licensed, a podiatrist is unable to continue that practice. Under current law, they can only do so acting as unlicensed surgical technicians, not as licensed surgeons.

EXAMINATION ISSUE

ISSUE #7: At the Board's last meeting, the Examination Committee recommended a transition from the state oral clinical licensing examination to Part III of the National Board of Podiatric Medical Examiners (NBPME) examination.

Question #7 for the Board: *Will the Board need a statutory change to eliminate the oral exam and require the NBPME Part III written exam?*

Background: The Board has indicated that beginning in 2002, Part III of the NBPME exam will be given in place of the state oral exam. Passage of Part III of the NBPME exam is required under the model law.

BUDGETARY ISSUES

ISSUE #8: Due to recent costly litigation expenses, the Board's budget for Attorney General costs has been nearly exhausted during the first four months of the current fiscal year. Of the $264,577 allotted, only $37,086 remains for the coming eight months.

Question #8 for the Board: *Please explain the reason for these litigation expenses. Why have Attorney General costs increased while the number of cases referred to the Attorney General decreased over the last four years? What is the Board's plan for addressing this deficiency? Will the Board have to stop prosecution of current and future cases?*

Background: BPM has recently been inundated with lawsuits by a particularly litigious licensee (who has recently had his license revoked). This has required the Board to spend its limited resources on unanticipated attorneys' fees to defend itself. The barrage of lawsuits has had such an adverse effect on the Board's fund condition. This is of particular concern to the Committee because of the possibility that the prosecution of other cases will suffer due to the BPM's current budget constraints.

ISSUE #9: SB 724 (Senate Business and Professions Committee), Chapter 724, Statutes of 2001, extended the Board's temporary fee increase for license renewal for two additional years. However, factors such as a drop in the number of licensees as well as an increase in expenses continue to contribute to a decline in the Board's reserve level.

Question #9 for the Board: *Does the Board anticipate that the temporary increase will remedy their declining fund condition or should the $100 fee increase become permanent?*

Background: The number of licensees under BPM's jurisdiction was 2,134 in FY 92/93. Since then, that number has declined, dipping to 1,755 for FY 00/01. Because BPM's operations are supported solely through fees it assesses, with the greatest amount coming from biennial license renewals, this decrease has been a source of considerable concern for the Board. Because of its dwindling licensee base, BPM has explored numerous ways to ensure the continuation of its regulatory programs. Effective January 1, 2000, its licensing fees were temporarily raised from $800 to $900 biennially — and upon enactment of SB 724 the temporary fee increase will be extended through December 31, 2003. At this point in time, it is uncertain whether the additional two years of the fee increase will provide enough revenue to stabilize BPM's fund condition.

CONTINUING COMPETENCY ISSUES

ISSUE #10: At the last review of the BPM, a continuing competency program was implemented. The Board is proposing to "refine" the continuing competency requirements.

Question #10 for the Board: *How is the continuing competency program working? What is included in the Board's proposal to refine the program? Will these changes negate the need for issuance of waivers? Would the Board recommend similar continuing competency changes to other health-related boards?*

Background: Through SB 1981, Chapter 736, Statutes of 1998, the Board initiated the first continuing competence program for any doctor licensing board in this country. Under Business and Professions Section 2496, each licensee must self-certify under penalty of perjury at each biennial license renewal that she or he meets at least one of seven peer-review-based pathways for re-licensure. Licensees who have been licensed for more than 10 years, have no peer-reviewed health facility privileges, and are not board certified, must either take the BPM's licensing exam or complete a special training course sponsored by an approved school under Business and Professions Code Section 2496(g). BPM has approved such a program sponsored by the California College of Podiatric Medicine in conjunction with the California Podiatric Medical Association. However, according to the Board, administrative transitions in both of those institutions have hampered the program's development.

The Board reports that its objective has been to phase the continuing competence program in as a pilot. Implementation of the Model Law would refine the continuing competence requirements based on the Board's experience to date and would provide additional pathways and ease compliance for the few who lack health facility privileges and are not certified by an approved specialty board.

ISSUE #11: BPM has indicated that their licensing coordinator "is preparing" to conduct random audits.

Question #11 for the Board: *Are CME audits occurring now? If not, when does the Board anticipate that these audits will be conducted? How long has it been since the discontinuation of audits by the Medical Board?*

Background: Due to high costs associated with contracting with the Medical Board staff to conduct random audits of continuing medical education (CME), the Board decided to discontinue the audits for CME. In turn, the Board will have to rely on its own licensing coordinator to perform the CME audits. It is unclear if audits are being conducted currently.

ENFORCEMENT ISSUES

ISSUE #12: It is unclear to what extent, if any, BPM Board members are engaged in reviewing incoming complaints.

Question #12 for the Board: *What is the process by which the Board reviews incoming complaints and determines whether the complaint should be sent out for investigation? Are Board members involved in that process?*

Background: BPM typically uses outside podiatrists on contract to review incoming complaints. However, because of costs associated with contracting out, there are some indications that BPM has used Board members to review incoming complaints. This is not a practice that the Joint Committee supports because of the inherent problems that can result. This would permit board members to recommend, at a very early stage in the process, that a complaint be moved out for investigation (i.e., a complaint against a competitor) or dismissed (i.e., a complaint against a friend).

ISSUE #13: It has been indicated that BPM may be issuing citations and fines for quality of care violations such as repeated negligent acts and gross negligence. There is concern that such cases should be pursued as disciplinary matters rather than just a citation and fine.

Question #13 for the Board: *To what extent is the Board issuing citations and fines for quality of care violations? When did BPM add Business and Professions Code 2234 to the regulation that lists the kinds of violations for which a cite/fine is appropriate?*

Background: Concerns have been raised that in some instances citations have been issued for quality of care complaints, such as those involving gross negligence or repeated acts of negligence by the podiatrist. Normally, such cases should trigger a disciplinary proceeding aimed a revocation and/or suspension of the podiatrists license. It does not appear that Medical Board would use its cite and fine authority for such these types of violations. Additionally, BPM also amended its cite and fine regulation to require its executive officer to have approval of an expert review (i.e., a podiatrist). This is not a requirement of the Medical Board.

ISSUE #14: There are excessive delays in processing complaints, investigations, and prosecuting cases.

Question #14 for the Board: *Is the Board currently working with the Medical Board to identify reasons for delays in investigations and develop possible solutions?*

Background: The average processing time is: 86 days to process a complaint; 331 days to investigate a complaint; 77 days from completed investigation to formal charges filed; 462 days from formal charges filed to conclusion of disciplinary case; and 1,058 days total (approximately 3 years) from the date a complaint was received to the date of final disposition of a disciplinary case.

Although the total number of days has decreased by almost one year (the last review showed an average of 1396 days), the delays are still excessive.

***It must be noted that BPM contracts with the Medical Board's Central Complaint Unit and Enforcement Program staff to conduct their complaint handling.**

ISSUE #15: Since the last review of the Board, there has been a decrease in the number of investigations opened.

Question #15 for the Board: *To what does the Board attribute this reduction?*

Background: The average of 85 investigations per year has decreased to an average of 53.

CONSUMER SATISFACTION ISSUES

ISSUE #16: According to the Complainant Satisfaction Survey conducted by the Board, consumer satisfaction is very low.

Question #16 for the Board: *Does the Board have a plan for addressing these concerns?*

Background: Only 25% of consumers were satisfied with the overall service provided by the Board. Other areas of concern include dissatisfaction with the: a) informative measures taken during the handling of a complaint, b) time to process complaint, and c) final outcome.